



Institute for Security Studies
Institut d'Études de Sécurité

Knowledge empowers Africa • Le savoir émancipe l'Afrique

How the AU Should Have Recognised the Libyan NTC

Mehari Taddele Maru, Programme Head, African Conflict Prevention Programme, ISS Addis Ababa Office

During its 291st Meeting of the AU Peace and Security Council, the African Union (AU) failed to officially recognise the National Transitional Council (NTC) in Libya. It indicated that it would grant recognition only when an 'all-inclusive transitional government' is established in Libya. For this reason, the former Libyan representatives to the AU, who are now supporting the NTC, are not allowed a seat in the current AU meetings. This indicates that the AU is being pulled in two directions but not by equal forces: the need to ensure respect for the principle of total rejection of unconstitutional changes of government, on the one hand, and the necessity to recognize the reality on the ground in Libya on the other. For this reason, the issuance of two communiqués would have helped the AU to pass on two separate but logically related and correct messages.

The first communiqué could have officially recognized the NTC and expressed the AU's readiness to work with the NTC towards an inclusive transitional process leading to constitutional governance. At some time, be it official or unofficial, the AU will have to accept the realities on the ground and consider working with the NTC. This is in the interests of protecting and serving the Libyan people – the intention of the AU roadmap. Besides, previously, the AU has worked with, but did not recognize, military juntas that toppled democratically elected governments, the recent cases being those of Madagascar and Mauritania.

The second communiqué could have been an instrument to officially criticize the international community, particularly the United Nations Security Council (UNSC), for its double standard application of International Law, when it comes to African issues. This communiqué could have disapproved of the North Atlantic Treaty Organization (NATO)'s expansive interpretation of the UN Resolutions' objectives and scope, and its disproportional use of force. Similarly, the AU could have criticised the NTC for rejecting the AU Roadmap and for serving as a front for forces harbouring contempt of the AU.

The external factors and forces behind the uprising in Benghazi and the resultant civil war and bombings by NATO raised several vexing questions with regard to the nature of the change of government in Libya, but also to a limited degree, events in Egypt. Generally speaking, while the Tunisian and Egyptian revolutions are spiritually within the AU normative framework, the Libyan change of government has some elements of unconstitutional changes of government. The Tunisian transfer of power from former president Zine al Abedine Ben-Ali to the Speaker, albeit a hasty declaration of succession by the then [Prime Minister of Tunisia](#), was done within the stipulation of the constitution of the country.

In the case of Egypt, unlike in Tunisia, former president [Hosni Mubarak](#) was pushed aside by the military in collaboration with the dominant powers. When the US and the Egyptian military leaders understood that Mubarak's regime was hard to salvage, they acted to rescue the military and associated interest in Egypt. Power was handed over, not to the Vice-President or the Speaker as the Egyptian constitution stipulates, but to a military council. Indeed both the Egyptian and Tunisian protests are true cases of revolution with broad based popular support. However, legally speaking, the Egyptian transfer of power to a military council harbors elements of unconstitutional change of government.

Given the history and posture of the Gaddafi regime in the wake of the uprisings in Benghazi and the possibility of mass killings, it was perfectly understandable for the international community, and through the UNSC, to decide to intervene to protect civilians from Gaddafi's excessive use of power. However, the purpose of the bombing changed from that of 'the protection of civilians' to 'the protection of rebels' as we now see it. Are the 'rebel groups', the NTC members 'civilians' in the spirit of International Humanitarian Law? Does the killing of Gaddafi meet the necessity and proportionality criteria as a legitimate military target to ensure protection of civilians and civilian areas? Will the killing of Gaddafi reduce attacks on civilians or increase death and suffering as it did in the cases of Iraq and Kosovo? The purpose of the bombing has undergone rapid metamorphosis from 'Gaddafi not a target' to 'Gaddafi as a legitimate target' of the air strikes. Moreover, the AU Roadmap is the only political map that exists, but it has been ignored by the UNSC and the international community including NATO.

Both the Gaddafi regime and the NTC employed foreigners in their military operations. Given that the NTC is not

an association of civilians, but of armed groups with a chain of command, it is treated as non-civilian groups under humanitarian law. Moreover, it has been recently accused of systemic violations of human rights, including summary executions of former members of the Libyan government, arbitrary killings of civilians opposing the uprising and abuses of migrants from Sub-Saharan countries. Indeed, the protection of civilians and civilian populated areas should also be extended to areas under the control of Gaddafi's forces that are attacked by the NTC forces. In other words, the provisions of the UNSC Resolution 1973 related to the protections of civilians should also be applicable to NTC liberated areas—now almost the whole Libya.

The change in government in Libya could be considered as an unconstitutional change of government for two reasons: the armed nature of the NTC and the involvement of foreigners in this civil war.

The recent reports of the involvement of European agents supporting the NTC in the control of Tripoli and in the search for the whereabouts of Gaddafi actually affirm the unconstitutional nature of the change of government.

For this and the above considerations, the recognition of the NTC not only threatened its normative framework governing unconstitutional changes of government. More importantly, such recognition would amount to an official endorsement of its own marginalization by the deliberate acts of the international actors actively supporting the NTC. In a way, the decision of the AU indicates its disapproval of the attitude and stance of the UNSC, and NATO. The International Community needs to take the AU more seriously and render due respect to its mandates. Such discordant relations will negatively affect the partnership. The AU, thus, needs to take the issue further for consultations with the international community.

While this is an apt concern for the international community to address, however, the AU needs to recognize and come to terms with the reality on the ground. Non-recognition of, and non-cooperation with, the NTC will put the majority of Libyans in grave danger - the very situation the AU wants to avoid by implementing the roadmap. It is to be recalled that the AU stance against the far-reaching interpretation of the UN Resolutions and its opposition to the NATO bombings was not aimed at entrenching Gaddafi in power. The AU's stand emanates from the need to minimize civilian casualties, to avoid any unconstitutional change of government and respect for the territorial integrity and sovereignty of Libya. Reading between the lines of its decisions and discussions, the AU would like to push for the right of Libyans to use their own resources including oil.

The AU Roadmap still remains very relevant. The humanitarian crisis in Libya stems from the political crisis. It is mainly a political crisis and above all requires a political solution. The AU Roadmap mainly contains provisions for the transitional period. In this regard, the element of exclusivity of the transitional process and protection of civilians remains as solid now as it was a few months ago. Thus, the AU needs to put pressure on the international community, particularly the UN, NATO and EU, to give it due regard and assist in its implementation.

For the international community, particularly the UNSC and NATO, the swift application of the no-fly zone on Libya exposed their approach of double standards in handling African cases. For almost a year and half, the PSC of the AU has repeatedly pleaded with the UNSC to impose a no-fly zone in Somalia to protect civilians. In Somalia, 200 people are dying every day due to the civil war for the last 20 years and now due to the grave famine that has devastated the Horn of Africa. Compared to the case in Libya, the humanitarian catastrophe in Somalia should have taken pride of place on the UNSC agenda and NATO's readiness to intervene. Without question, NATO and UNSC legitimacy will increasingly be damaged because of all these above mentioned reasons. In Africa, particularly the AU, UNSC and NATO will have to work to mend their diplomatic relations. For these very reasons, the AU should have had a Second Communiqué that criticizes the international community in its contemptuous approach to the AU and its double standards when it comes to Africa.

The AU has to pressure the NTC to ensure that the transitional process is inclusive of all segments of the Libyan society, mainly clans. The NTC and the AU need to work together to ensure that Libyans elect their government peacefully and democratically. Without a doubt, the foreign policy and relations of the NTC and the future elected Libyan government will be different from that of Gaddafi. Firstly, Gaddafi's foreign policy in Africa stems from his individualistic interest to lead a United States of Africa—a project in which he has heavily, but unsuccessfully, invested for the last decade. Libya was too small a territory and population for 'the Brother Leader'. He needed a much bigger territory and population to lead. For the NTC, and presumably for the next elected government, Libya will still be a challenge to govern, given that some of the clans may think of establishing their own 'emirates'. That is the reason why the AU is concerned about the territorial integrity of Libya.

Some institutions have threatened that they will stop their partnership with the AU (meaning funding the AU's programmes), unless the AU changes its position on Libya. However, such conditionality that uses funding to bend the arms of the AU is not in effect different from Qaddafi's 15% contributions to the AU that many of these international institutions criticized the AU for in the first place. For the AU to stand on its own two feet and avoid such conditionality, the African states need to provide sufficient funding to the AU to operate. This does not necessarily lead to the rejection of any funding from partners or specific countries from Africa to contribute more.

But for the AU and African countries to stand on their feet and take a decision as they see it fit, they need to contribute enough resource to their regional governance institutions. Putting their money where their mouth is, African countries can stand for what they think is best for Africa. Otherwise, those who control the coffers of Africa and the AU will also try to control its destiny.

<http://www.issafrica.org>

Date: 2011-09-03, 17:34